

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

For Online Publication Only

-----X
LONG ISLAND NEUROSCIENCE SPECIALISTS,

Plaintiff,

-against-

ORDER

17-CV-3341 (JMA)(ARL)

FRINGE BEENFIT FUNDS LOCAL 14-14B
INTERNATIONAL UNION OF OPERATING
ENGINEERS,

Defendant.

-----X

AZRACK, United States District Judge:

On December 30, 2016 plaintiff commenced this action in the Supreme Court of the State of New York – County of Suffolk. (ECF No. 1.) On June 5, 2017, defendant removed the action to federal court. (ECF No. 2.) On November 13, 2017 defendant filed a motion to dismiss the complaint. (ECF No. 13.) On May 11, 2018, the Court referred this motion to magistrate Judge Arlene R. Lindsay for a Report and Recommendation (R&R). On July 31, 2018, Judge Lindsay issued an R&R recommending that the defendant’s motion to dismiss be granted in part and denied in part, with leave to amend plaintiff’s breach of fiduciary duty claim. The R&R explicitly advises that the parties have fourteen (14) days from service of the R&R to file written objections, and that failure to file objections will result in a waiver of those objections for purposes of appeal. (R&R at 13.) No objections to the R&R were filed.

In reviewing a magistrate judge’s report and recommendation, the court must “make a de novo determination of those portions of the report or . . . recommendations to which objection[s][are] made.” 28 U.S.C. § 636(b)(1)(C); see also Brown v. Ebert, No. 05–CV–5579, 2006 WL 3851152, at *2 (S.D.N.Y. Dec. 29, 2006). The court “may accept, reject, or modify, in

whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). Those portions of a report and recommendation to which there is no specific reasoned objection are reviewed for clear error. See Pall Corp. v. Entegris, Inc., 249 F.R.D. 48, 51 (E.D.N.Y. 2008).

As noted above, no objections have been filed to the R&R and the time for objections has passed. The Court has reviewed the R&R for clear error and finding no such error, adopts Judge Lindsay’s R&R in its entirety as the opinion of the Court. Accordingly, the Court DENIES defendant’s motion to dismiss plaintiff’s two ERISA claims on the basis of failure to exhaust administrative remedies; GRANTS defendant’s motion to dismiss plaintiff’s breach of fiduciary duty claim brought pursuant to Section 404 of ERISA, with leave to replead this claim; GRANTS defendant’s motion to dismiss plaintiff’s claim pursuant to New York Insurance Law § 3224-a; and GRANTS defendant’s motion to dismiss plaintiff’s promissory estoppel claim.

Plaintiff is afforded an opportunity to amend her complaint as to its breach of fiduciary duty claim in accordance with this Order. Plaintiff’s amended complaint must be filed within thirty (30) days of the date of this Order.

SO ORDERED.

Date: August 15, 2018
Central Islip, New York

/s/ (JMA)
Joan M. Azrack
United States District Judge